IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.22716 of 2007

1. MD.SATTAR @ SATTAR MIAN, Son of Md. Mazid @ Mazid Mian
2. Md. Munna @ Munna Mian, S/o Md. Mazid @ Mazid Mian
3. Md. Khalil, Son of Md. Yusuf.

All residents of Saharsa Basti, P.S. and District Saharsa.

….. Petitioners

Versus

1. STATE OF BIHAR
2. Md. Tejmul Son of Ummaid Mian, R/o Saharsa Basti, Ward no. 27, P.S. and District – Saharsa.

…. Opp. Parties

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3 16.10.2008 Heard learned counsel for the petitioners as also the learned counsel for O.P. No. 2 and learned A.P.P. for the State.

The petitioners who have been impleaded as accused in Saharsa (Town) P.S. Case No. 106 of 2004 as also in Complaint Case No. 303 of 2004 have prayed for the quashing of the order dated 2.1.2006 passed by Sri Dilip Kumar Jha, learned 3rd Additional Sessions Judge, Saharsa, in Cr. Revision No. 457 of 2004, whereby the prayer of the petitioners for quashing of the order dated 19.7.2004 passed by Sri Deepak Kumar, Judicial Magistrate, 1st Class, in Complaint Case No. 303 of 2004 was rejected.

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The whole difficulty appears to be of the misunderstanding of the provisions of law both by the parties as also the court below.

The police case was filed earlier and on the same set of facts a complaint case was filed later on and although cognizance has been taken in the complaint case the police case is still under investigation.

In that view of the matter it will only be appropriate for the petitioners to move the trial court to exercise powers under section

210(2) Cr.P.C after the final form or the charge sheet is received from the police.

With the aforesaid observations this application is disposed of.

**Spd/-** **(Abhijit Sinha, J.)**

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